IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 1ST AUGUST 2007 / 10TH SRAVANA 1929

Mat.Appeal.No. 117 of 2006()

OP.712/2001 of FAMILY COURT,ERNAKULAM
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APPELLANT/PETITIONER:-

SUMI, AGED 30 YRS, D/O. ISSAC,
KARAMOLEL HOUSE, VALAMPOOR KARA,
PATTIMATTOM VILLAGE, KUNNATHUNADU TALUK.

BY ADV. SRI.V.K.VEERAVUNNY
SRI.K.Y.TOMY

RESPONDENTS/RESPONDENTS:-
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1. BABU, AGED ABOUT 37 YRS,
S/O. KURIAKOSE, KAIPPANALIL HOUSE,
KARLOTTU KARA, PANNIYANKARA P.O.,
KANNAMBRA VILLAGE.

2. KURIAKOSE, AGED ABOUT 64 YRS,
DO. DO.

3. ANNAMMA, AGED ABOUT 59 YRS,
DO. DO.

BY ADV. SRI.K.SURENDRA MOHAN
SRI.ISSAC NINAN

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 021/07/2007, THE COURT ON 01.08.2007 PASSED THE FOLLOWING:

KURIAN JOSEPH,
&
T.R.RAMACHANDRAN NAIR, JJ.

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Mat.Appeal.No.117 of 2006.
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Dated this the 1st day of August, 2007.

J U D G M E N T

T.R.Ramachandran Nair, J.

This appeal arises from the order dated 28-2-2006 in OP.No.712/2001 of the Family Court, Ernakulam. The appellant is the petitioner in the above OP. The OP was filed for recovery of a sum of Rs.1,50,000/- and interest thereon and also for recovery of 30 sovereigns of gold ornaments scheduled in the petition or in the alternative for its value to the tune of Rs.1,20,000/- with 18% interest thereon. The OP in question was filed under Section 7 of the Family Court Act, 1984. The Family Court as per the order dismissed the same, rejecting the claim of the petitioner on both counts. Challenging the same the petitioner has filed this appeal.

2. The appellant was married to the first respondent and the marriage took place on 3-7-2000. Pursuant to the order in Divorce OP.No.975/2001 they have separated themselves. It is subsequently the present OP was filed by the former wife against the former husband and his parents.

3. The main averments in the OP are the following:

The marriage took place on 3-7-2000 in the St.George Orthodox

Church, Vaniampara which was held under Christian rites. After the marriage the parties stayed in the house of the first respondent. According to the appellant, even from the early days of the marriage the respondents started behaving cruelly towards her and because of the actions of the respondents she had to be admitted to the hospital on several occasions. The first respondent is an alcoholic and quarrelsome. It is her case that because of the physical and metal torture she had to come back to her parental house. According to the averments in the petition at the time of marriage her father had paid Rs.1,50,000/- towards her share and ornaments worth 30 ¼ sovereigns. It is the case of the appellant that the respondents have appropriated themselves the money and the gold and when she was brought back from the marital house by the 1st respondent in January, 2001, she was wearing gold ornaments only weighing two grams. Accordingly, she had prayed for the reliefs mentioned already. The OP was amended later to add paragraphs 2(a) and 2(b). It is averred in para.2(a) that she was wearing various items of gold ornaments weighing 30 ¼ sovereigns at the time of marriage which were worn by her when she was brought to the house of the respondents after the marriage.

4. The respondents in the objection filed denied the entrustment of the money to the tune of Rs.1,50,000/- at any time before or after the marriage. According to the case pleaded by the respondents, at the time of

marriage there was no such arrangement and no money or gold ornaments were received by them. The definite case of the first respondent in the proof of affidavit is that the marriage in question was his second marriage and therefore he did not raise any demand for money or gold as pre-conditions of their marriage. It is also his case that the appellant was not financially sound and by agreeing for the marriage he actually attempted to help the family of the appellant.

5. In the additional written statement filed also the first respondent has chosen to deny the case of the appellant in the amended OP that she was wearing various ornaments on the day of the marriage. According to him she was not having any gold ornaments as alleged in the petition.

6. Both sides adduced evidence both oral and documentary. After considering the various evidence the Family Court held that the petitioner failed in proving that a sum of Rs.1,50,000/- was entrusted as patrimony. As regards the claim for return of gold ornaments also the findings were against the appellant.

7. Heard learned counsel for the parties. The learned counsel for the appellant argued that the Family Court has totally went wrong in appreciating the evidence adduced by the appellant. It is submitted that the evidence of Pws.2 and 3 clearly proves the entrustment of Rs.1,50,000/0 as patrimony before the marriage. It is also submitted that their evidence have

conclusively proved that she was wearing the gold ornaments in question at the time of marriage and the findings rendered by the Family Court on both counts suffer from infirmities. Per contra, the learned counsel for the respondents submitted that in view of the evidence of the father of the petitioner who was examined as RW3, the case of the appellant as regards the entrustment of Rs.1,50,000/- is shattered as he himself had denied parting with the money and about his participation in any pre-marital arrangement. The learned counsel also submitted that the findings rendered by the Family Court in respect of the second point regarding the entrustment of gold ornaments also are perfectly justified.

8. As regards the payment of patrimony is concerned, the case of the appellant is that it was entrusted before the marriage and the money was arranged by her father. It is her case that Pws.2 and 3 had accompanied her father while entrusting the amount. A reading of the evidence of Pws.2 and 3 would show that they have also deposed in support of the case of the appellant that all the three went to the residence of the first respondent and the amount of Rs.1,50,000/- was handed over to the father of the first respondent. The evidence of Pw3 shows that the father of the appellant is residing separately from the family for the last 20 years. It is also deposed by PW2 that the engagement was conducted in the house of his brother George on 25-6-2000. In cross-examination he admits that the father of the appellant had

abandoned his wife about four years after their marriage. According to him, Rs.One lakh was arranged by the father of the appellant and the remaining amount was borrowed by him from several other persons. The evidence of PW3 also will show that himself and PW2 and the father of the appellant went to hand over the amount. He also deposed that an amount of Rs.One lakh was arranged by the father of the appellant. In the re-examination he stated that the engagement took place at the residence of George on 25th and the money was handed over on 19th.

9. We will advert to the cross-examination of PW1 on the above issue. According to her, the amount was entrusted in the house of the respondents by Pws.2 and 3 and her father. She admitted that the relationship between her father and her mother was estranged. Her father was examined as RW3. In his deposition he had stated that he married the mother of the appellant on 23-8-1979 and resided together only upto the period when the child attained 1 ½ years of age. According to him, thereafter they have been residing separately and he denied even the suggestion about any acquaintance with the first respondent. He also deposed that he did not know the first respondent, his father or any other relatives. According to him, he was not aware about the marriage and was not aware about the betrothal ceremony. He also deposed that he was not informed about the marriage and he was not asked to render any financial assistance and he had

not actually given any financial help also. It is, therefore, clear from the evidence that the case of the appellant that the amount of Rs.1,50,000/- was paid through her father has not been sufficiently proved. In the cross-examination of RW3 there was a suggestion that in the Adalath a settlement was arrived as regards his disputes with the mother of the appellant and he had agreed to part away 17 cents of land and he is deposing against the daughter to wriggle out of the obligation.

10. The Family Court in the judgment under appeal after referring to the above evidence entered a finding that there are several versions which are mutually contradictory about entrustment of Rs.1.5 lakhs and about the persons who actually attended the engagement ceremony. The learned counsel for the appellant argued that the father of the appellant RW3 was won over by the respondents herein and that is the reason why he had deposed against the appellant herein. In fact, to justify the said stand an attempt was made before the Family Court itself by the appellant by filing IA.No.2942/2005 in IA.No.2084/2005 seeking permission to produce two documents. A reading of the affidavit shows that the appellant reiterated her case in the OP that the amount was mainly arranged by her father. According to her, he did not attend the marriage ceremony because of his dispute with her mother. The affidavit reveals that the appellant attributes the above attitude of the father only because of his disputes subsisting with

her mother. Relying upon his admission in the cross-examination that his disputes with the mother of the appellant had been settled in the Lok Adalath and that he had agreed to part away 17 cents of land pursuant to the compromise, the appellant sought to produce the carbon copy of the settlement arrived at in the Adalath conducted by the Peoples Council for Social Justice and accept the same in evidence. Relying upon the same the learned counsel for the appellant points out that he has chosen to depose before the Family Court denying any role in the pre-marital stage in these circumstances and hence, his denial cannot be taken in the face value. It is not a case where the only part played by the father RW3 was to accompany Pws.2 and 3 for giving the amount. Actually the source for the money is RW3 himself as alleged in the petition as well as the case proved through other witnesses. We find it difficult to accept the argument of the learned counsel for the appellant, as RW3 in his evidence in toto has denied parting away any money for the marriage as well as about his participation of any of the talks etc., with the respondents for arranging the marriage. In that view of the matter we cannot find fault with the findings rendered by the Family Court as regards the payment of patrimony by the appellant herein.

11. The next aspect to be considered is regarding the gold ornaments. The consistent case of the petitioner was that she was wearing gold ornaments at the time of marriage which had been taken to the residence

of the first respondent and have not been returned except the ornaments covering two grams. A reading of the additional written statement of the respondents herein shows that there is total denial of the appellant wearing any gold ornaments at the time of marriage. It is stated in the additional written statement that, "the averments made in paragraphs 2(a) and 2(b) of the petition are false hence denied. The statement that at the time of marriage the petitioner worn gold ornaments weighing 30 ¼ sovereigns are false hence denied." In para.4 it is stated that, "in fact she was not having any gold ornaments as alleged in the petition. The claim made is imaginary and made for the purpose of this petition." It is repeated in para.5 to the effect that, "the statement made in 2(b) of the petition that the petitioner had possessed 30 ¼ sovereigns gold ornaments as stated in para.2(a) are entrusted with 1st respondent is false and denied. In fact the petitioner did not possess any gold ornaments as claimed and that imaginary ornaments were not entrusted to the 1st respondent." The consistent case of the petitioner was that she was wearing the ornaments as claimed in the OP. To substantiate her case, apart from the oral evidence she has produced the Album containing the photographs taken at the time of marriage as Ext.A4. Ext.A5 is the negative of the photographs. The photographs show that she is wearing different items of gold ornaments at the time of marriage. There is no challenge in the cross-examination about its contents when PW1 was examined. There is no dispute

also that these are the photographs taken at the time of marriage with the first respondent. It is evident from the photographs that the appellant is wearing various types of ornaments, a fact deposed by her and Pws.2 and 3. The consistent case of the appellant is that out of 30 sovereigns, 15 sovereigns were newly purchased from Alapatt Jewellery and the other 15 sovereigns comprised of old ornaments. PW1 in her cross-examination also has stated that at the time of marriage she was wearing ornaments weighing 30 sovereigns; 10 gram necklace , another 12 gram necklace, a show chain of 5 sovereigns , large chain worth 4 ¼ sovereigns, another chain of 3 sovereigns, one bangle weighting 1 ½ sovereigns, 14 bangles weighing 8 ¾ sovereigns, another bangle weighing 16 grams and other ornaments like chain etc. According to her, 8 bangles weighing 15 sovereigns were old ornaments. In the cross-examination she has stated that the new gold ornaments were purchased from the show room of Alapatt Jewellery at Ernakulam South. She has specifically stated that 14 bangles, show chain worth 5 sovereigns and a necklace were newly purchased. The first respondent could not succeed in challenging the above evidence in her cross-examination and as pointed out earlier the trend of cross-examination shows that the photographs wherein she is shown as wearing various ornaments have not been disputed also.

12. In the proof of affidavit filed by RW1 it has been stated that the appellant had not worn the gold ornaments described in the petition at the

time of marriage. The deposition of RW1 shows that the stand appears to be that she was not wearing any gold ornaments at the time of the marriage and therefore, there was no occasion to appropriate the ornaments. In the cross-examination he has stated that his first marriage was divorced in the year 1999 after clearing other obligations with the former wife. He admitted that at the time of marriage photographs have been taken and Ext.A4 series are the above photographs and that the gold ornaments worn by her can be seen from them. It is pertinent to notice herein that in the objection filed by respondents, they admit that the album and its negative taken in connection with the marriage are in her possession, even though according to them they had spent Rs.3,000/- for the album. We also notice that he has attempted to develop a case that the ornaments are not pure gold and they are only plated gold. Further down in the cross-examination he has deposed that her ornaments were being kept by her and she was wearing ornaments occasionally. It is significant to note that there is no case in the pleadings of the first respondent that the ornaments which were worn by the appellant have been taken back by her when she left the house of the first respondent. The first respondent has got a case that there was no condition for the marriage either with regard to the payment of money or in regard to the ornaments. According to him, it is only the financial condition of the appellant which persuaded him to marry help the appellant. The parties

admittedly are not known earlier, and are from distant places as the appellant is from Ernakulam district and the first respondent is from Palakkad district and the distance between their places of residence is stated to be 150 kms. by the respondents themselves in the objection filed by them. He has no case that the first respondent and others were having any acquaintance with her family also. Therefore, his plea that he wanted to give her support in life as she was coming from a poor family is not banafide. Even though RW2 who is the father of the first respondent was also examined, in cross-examination he stated that his son had told him that the ornaments which she was wearing on the date of marriage were plated ones only. He even denied the suggestion that the ornaments worn by the appellant as seen from the photographs are pure gold ornaments. Actually these will amount to an admission of the fact that the appellant had worn the ornaments at the time of marriage which defeats their case in the pleadings. Therefore, the evidence of RW2 is not helpful to support the stand of the first respondent that the appellant did not wear any gold ornaments at the time of marriage. In fact, in the deposition of RW2 he had also admitted that the ornaments were being kept in a suit case. Therefore, the respondents have no consistent case and they have practically admitted that the appellant was possessing gold ornaments which were kept in the house of the 1st respondent himself. Their plea in the oral evidence that all these were plated gold cannot be believed at all. Actually no such plea has

been raised in the objection originally filed or in the additional written statement.

13. In support of her case regarding the gold ornaments she had examined PW2 also who has spoken in clear terms that she was wearing gold ornaments weighing 30 sovereigns. He has also deposed that new ornaments were purchased from Alapatt Jewellery, Ernakulam weighing 15 sovereigns. He has also affirmed that no bill was taken to avoid payment of tax. He has clearly stated in his evidence that out of the entire ornaments 15 sovereigns were newly purchased and 15 sovereigns were old ornaments. As far as these aspects are concerned there is no serious cross-examination by the respondents. In the evidence of PW3 also these facts have been clearly deposed. In fact RW1 had admitted in his evidence that they had forty cents of land and the mother had some employment and her uncle was a bank employee. Hence it shows that they were not so poor.

14. Thus, it is a case where the appellant has adduced cogent evidence in support of her case that she was wearing 30 sovereigns at the time of marriage. It is true that for the purchase of 15 sovereigns no bills have been produced. Going by the probabilities of the case that will not defeat the claim of the appellant for more reasons than one. Firstly, it has been explained that the bills were not taken for fear of tax. Secondly, in the objection the first respondent attempted total denial of even wearing of gold

ornaments by the appellant. But confronted with the photographs he had to admit that photographs show that the appellant was wearing gold ornaments. Therefore we are of the view that the appellant has succeeded in proving her case that she was wearing ornaments weighing 30 sovereigns of gold at the time of marriage. Details of each one are given in the petition and in her deposition.

15. The Family Court disbelieved her case on the ground that PW1 has stated that all the gold ornaments were brand new whereas Pws.2 and 3 had deposed that 15 sovereigns of gold ornaments were old and 15 sovereigns were newly purchased. The evidence of PW1 shows that she has clearly stated that 15 sovereigns were old ornaments and 15 sovereigns were newly purchased. Therefore, there was no contradiction on this aspect as observed by the Family Court. The Family Court was not right in agreeing with the contention of the respondents developed at the time of evidence that the gold ornaments were plated ones as no such plea was raised in the written statement or in the additional written statement. Therefore, the case pleaded by the appellant has been probabilised and proved by material evidence both oral and documentary. Hence we reverse the findings of the Family Court as far as the said issue is concerned. The finding of the Family Court as regards the payment of Rs.1,50,000/- is confirmed. The appellant is entitled to recover 30 sovereigns of gold ornaments scheduled in the OP or in the alternative its

value to the tune of Rs.1,20,000/- from the respondents. The appeal is allowed to that extent and decree is passed accordingly. The appellant will also be entitled for payment of interest at 6% from the date of filing of the OP till realisation.

The appeal is allowed as above. The parties are directed to bear their respective costs.

KURIAN JOSEPH, JUDGE.

T.R.RAMACHANDRAN NAIR, JUDGE.

Kvs/-